



Mission and Installation Contracting Command

CUSTOMER CONNECTION

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MISSION

The United States Army Mission and Installation Contracting Command (MICC), part of the Army's Generating Force, plans, integrates, awards, and administers contracts throughout the ARFORGEN cycle supporting the Army Commands, Direct Reporting Units, USARNORTH and other organizations to provide the best value for the mission, Soldiers and their Families.

VISION

The MICC functions as an integral and indispensable partner in accomplishing the Army's mission through contracted materiel and services

DISCLAIMER

Customer Connection is an official publication distributed quarterly by and for the customers of the Mission and Installation Command. *Customer Connection* is prepared by the MICC Policy Team to provide timely, factual information on contracting policies, operations and technical developments within the command. Articles published in *Customer Connection* do not necessarily represent the official opinions of other commands within the Department of the Army.

Welcome



BG STEPHEN B. LEISENRING
COMMANDING

This is truly an exciting time to be leading the Mission and Installation Contracting Command (MICC). I arrived on November 4, 2009, as the first General Officer to take command of the MICC, which was initially formed in early 2008. Created as a result of the need for a mission oriented contracting command, the MICC is the largest subordinate command to the Army Contracting Command (ACC) and has been instrumental in addressing and resolving the challenges identified in the 2007 Gansler Commission Report.

The MICC provides integrated contracting support to the Army's Generating Force, ultimately supporting the Soldier and the Army Family, throughout the full spectrum of military operations. We have a team of military and civilian professionals dedicated to providing contract planning and oversight, policy implementation, and customer focused procurement services for Army installations and training centers in the continental United States (CONUS), including the Army's Power Projection Platforms and both the National and Joint Readiness Training Centers. The command currently consists of a Headquarters, seven Regional Contracting Centers, and 36 Contracting Offices located throughout CONUS.

The MICC Contracting Centers and Offices award and manage local and enterprise wide contracts that impact customers from Army Generating Force Units, Major and Subordinate Commands, and Army installations. The MICC Headquarters is complemented by a robust procurement staff to facilitate customer support while serving the Commander in his capacity as the Head of the Contracting Activity (HCA).

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Understanding Contract Period of Performance

What is a period of performance?

The time of delivery or performance is an essential contract element and shall be clearly stated in the solicitation and resultant contract. For supplies, the delivery date is an expressly stated completion date by which the supplies must be received. For services, which are the focus of this article, the period of performance is the specified time-

frame within which the services will be performed or completed. The period of performance is commonly specified in terms of calendar dates such as 1 October 2010 through 30 September 2011. Alternatively, the period of performance could be expressed in terms of days following contract award or days from the date the contractor receives a notice of an award.

The awardee is contractually obligated to adhere to the performance period stipulated in the contract. A contractor must cease work at the end of the performance period unless a modification is properly executed to exercise a contract option or otherwise extend the period of performance.

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What is the acceptable length for a period of performance?

Services are generally funded with Operations and Maintenance, Army (OMA) appropriations, which are normally available for just one year. The “[Bona Fide Need Rule](#)” requires that funds be obligated only to meet a legitimate need that exists in the fiscal year for which the appropriation was made. At one time, contract performance using OMA funds was not allowed to cross into the next fiscal year unless the services were nonseverable, which means that the services could not be subdivided for separate performance in difference years. However, as a result of FY98 legislation, [Title 10 of the U.S. Code Section 2410a](#) now permits DoD to enter into a contract for severable services that begin in one fiscal year and end in the next fiscal year, provided that the period of performance does not exceed one year. This guidance is also found in [FAR 32.703-3\(b\)](#) and [FAR 37.106\(b\)](#). Simply put, the period of performance for a service contract is generally limited to one year, but may begin in one fiscal year and end in the next. In limited circumstances, the period of performance for nonseverable services may be longer than one year.

For recurring services, should the period of performance start on the first day of the fiscal year?

Because it is permissible for performance under a service contract to cross fiscal years, it is not necessary that performance run on a fiscal year basis, i.e. 1 October through 30 September. In fact, because of the funding challenges that generally occur with the passing of a new budget each year, it is recommended that the performance cycle not be linked with the beginning of the new fiscal year.

What are the guidelines for including options for additional periods of performance?

The contracting officer may include options in a contract for additional periods of performance when it is in the Government’s interest and there is a reasonable likelihood that the options will be exercised. The contracting officer has a unilateral right to exercise options provided that the decision is appropriately documented in the contract file and notification is provided to the contractor within the time stipulated in the contract. The Government is under no obligation to exercise an option if it is no longer the most advantageous method of fulfilling the Government’s needs. When options are used, the solicitation and resultant contract must include appropriate option provisions and clauses. Contracts for recurring services generally include:

* [FAR 52.217-4, Evaluation of Options](#). This provision notifies offerors that the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. To satisfy the requirements of FAR Part 6 regarding full and open competition, options must be evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract.

* [FAR 52.217-8, Option to Extend Services](#). This clause allows the Government to require continued performance of any services within the limits and at the rates specified in the contract. This option provision can be exercised more than once, but the total extension of performance cannot exceed six months. The clause must specify the period of time within which the contracting officer must exercise the option. This “extra” six months is not reflected in a Contract Line Item on the contract, as are the standard option periods that follow the base period.

* [FAR 52.217-9, Option to Extend the Term of the Contract](#). This clause sets forth the terms for exercising the option periods included in the contract. The contracting officer fills in the timeframe in which official written notice must be provided to the contractor, and the timeframe in which a preliminary written notice of intent to extend the contract must be provided.

How many option periods can a contract have?

[FAR 17.204\(e\)](#) states that unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed five years in the case of services. Contracts for recurring services have generally included a one-year base period and four one-year options. However, on 14 September 2010, the Under Secretary of Defense (Acquisition Logistics, and Technology) issued a memorandum, Subject: [Implementation Directive for Better Buying Power – Restoring Affordability and Productivity in Defense Spending](#), that sets forth a number of new acquisition initiatives. One element of the guidance sets forth a goal to “enhance competition by requiring more frequent re-competes of knowledge based services.” The memorandum directs that single award contracts be limited to three years, including all options. A sound business rationale must be documented to support a single award contract that exceeds this three-year limit. Multiple award indefinite-delivery, indefinite-quantity contracts may be five total years in length if provisions are included to allow changes to the contractor pool within the life of the contract. The MICC will immediately begin compliance with this DoD guidance.

What happens if the option is not exercised in accordance with the timelines set forth in the con-

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tract?

Options for additional performance periods must be exercised within the timeframe specified in the contract clauses in order for the Government to retain its unilateral right to require continued performance at the prices set in the contract. If the required notice is "late," then a contractor is under no obligation to perform an option period, but may agree to do so. Late notices negatively impact a company's business strategies and planning efforts. The requiring activity should work closely with the contracting officer to ensure that the Government makes deliberate and timely decisions about whether to exercise an option.

If the contracting officer does not exercise an option prior to the expiration of the current performance period, the contract dies. Any request for a contractor to continue providing a service after the period of performance has expired consti-

tutes an unauthorized commitment (UAC). Individuals may be held personally liable for costs associated with a UAC. Ratification of a UAC is described at [FAR 1.602-3](#) and [AFARS 5101.602-3-90](#).

What if contract performance needs to extend beyond the last option period?

Ideally, good planning mitigates the need to extend contract performance beyond its intended life, but circumstances may arise that disrupt the planning process and/or milestone execution. Therefore, the Government sometimes requires continued contract performance beyond the last option period, such as a situation where the follow-on contract for a recurring service is not quite ready for award. Further, a protest during the follow-on competition could delay the execution of a new contract. In these circumstances, it may be in the Government's best interest either to extend the current contract or issue a new

contract to provide interim performance.

A properly executed Justification and Approval (J&A) for Other than Full and Open Competition is required to support either a modification extending the period of performance under the current contract or a new sole source interim contract. In complex service requirements, issues such as start-up costs, phase-in, transfer of government furnished property, and recruitment and manning may contribute to the J&A rationale. Regardless of the citation used to justify Other than Full and Open Competition, the length of the extension or sole source interim contract must be the minimum necessary to provide continued service pending award of the follow-on contract. If time permits, a competitive interim contract is preferable, although the effort and expense involved in phasing in a complex service may hinder interim performance by anyone other than the incumbent contractor.

Option to Extend Services Requires Justification

The MICC has released guidance regarding the use of Federal Acquisition Regulation (FAR) clause [52.217-8](#), Option to Extend Services. This clause is commonly included in Government contracts to enable continued performance of services beyond the original contract expiration date (within the limits and rates specified in the contract) for a period not to exceed six months.

On September 14, 2009, the U.S. Government Accountability Office (GAO) sustained protest [B-401472](#) on a sole-source extension of a contract at Fort Drum. In the decision, GAO noted that the option to extend the contract under [FAR clause 52.217-8](#) was not evaluated as part of the initial competition, and therefore exercise of

the option amounted to a contract extension beyond the scope of the contract and effectively constituted a new procurement action. The Army asked for reconsideration, but GAO denied the request December 7, 2009 because the agency had not shown any error of fact or law in the decision. GAO reiterated that in order to satisfy the requirements of FAR Part 6 regarding full and open competition, an option must have been evaluated as part of the initial competition and be exercisable at a value specified in the contract or be reasonably determinable from the basic terms and conditions. In other words, the price evaluation must be effected by adding the total price for all options to the total price of the basic requirement. If the Option to Extend Services was

not evaluated during the initial competition, the agency must document a reasonable justification for the extension IAW [FAR 6.303](#).

To preclude the need for a sole source justification before exercising the Option to Extend Services on future contracts, contracting officers have been directed to include language in solicitations advising offerors that the value of the Option to Extend Services will be included in the price evaluation. Accordingly, the solicitations will indicate that the Government will evaluate the period associated with the Option to Extend Services clause by adding six months of the offeror's final option period price

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Purchasing from Federal Prison Industries



Federal Prison Industries, Inc. (FPI), also referred to as UNICOR, is a self-supporting, wholly owned Government corporation that provides training and employment for Federal prisoners through the sale of its supplies and services to Government agencies. Supplies and services available from FPI are listed in the FPI Schedule, which can be accessed at <http://www.unicor.gov>.

In accordance with law and policy set forth in [FAR 8.601](#), before purchasing a supply item that is listed in the FPI Schedule, the agency must conduct market research to determine whether the FPI item is comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. DoD has established additional procedures in [DFARS 208.602-70](#) that consider whether or not FPI has a "significant market share" for a product category. FPI is considered to have a significant market share if the FPI share of the DoD market is greater than 5% for the product category being purchased.

If FPI has a significant market share - the product must be procured using competitive (or fair opportunity) procedures in accordance with DFARS 208.602-70. Under these circumstances, FPI can submit a quote along with other offerors and have that quote fairly considered. FPI must be included in the competition even if the action is set aside for small business. If an order against a multiple award contract is contemplated, the contracting officer must include FPI and provide the item description/specifications and evaluation factors so that an offer from FPI can be evaluated on the same basis as other offerors. Contracting officers shall consider a timely offer from FPI along with other quotes received.

If FPI does not have significant market share - the contracting officer must determine whether or not the FPI product is comparable in terms of price, quality, and delivery to supplies available from the private sector. If the product is comparable, the contracting officer shall purchase the item from FPI in accordance with [FAR 8.602\(a\)\(3\)](#) unless a waiver is obtained in accordance with [FAR 8.604](#). If the product is not comparable, the contracting officer must acquire the item using competitive procedures in accordance with [FAR 8.602\(a\)\(4\)](#). The process then becomes the same as that for products for

which FPI has significant market share, as discussed above. The contracting officer shall include FPI in the solicitation process (including situations where multiple award contracts are contemplated) and consider a timely offer from FPI.

The latest guidance issued by the Director, Defense Procurement and Acquisition Policy, lists seven Federal Supply Classification (FSC) codes for which FPI has significant market share. See memo at <http://www.acq.osd.mil/dpap/policy/policyvault/USA001275-10-DPAP.pdf>. Note that office furniture is not on the current list and therefore we must give FPI statutory priority for furniture buys because it is a product for which FPI does not have significant market share.

In limited circumstances, FPI is not a required source, so a waiver is not required. Exceptions include supplies acquired and used outside the US and situations where public exigency requires immediate delivery. The full list of exceptions is available at [FAR 8.605](#).

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to the offeror's total price. To facilitate the evaluation, the contracting officer may request that future Independent Government Cost Estimates (IGCEs) include the projected costs associated with the Option to Extend Services for a period up to six months in length.

To the maximum extent possible, we must work together to avoid

the need to use the Option to Extend Services clause. Extensions under this clause often result from unexpected delays in the procurement process for follow-on contracts, unanticipated protests, or poor acquisition planning. So, if you have a recurring requirement currently being performed under contract, please begin the planning process early to prevent gaps in cov-

erage. Customers are encouraged to work aggressively with MICC team members to ensure all requirements are included in the advanced acquisition planning process.